

# Oroville 401: Connection & Enforceability

California Sportfishing  
Protection Alliance

December, 2010

# Disconnection

DWR and the State Water Contractors want you to view the operation of Oroville as a self-contained entity.

# Disconnection.

The Draft 401 separates the operation of Oroville from:

- State Water Project and OCAP
- Delta Water Quality
- Delta Inflow & Outflow
- The Yuba River

# Disconnection: Documents

- Oroville Settlement
- NEPA & CEQA docs
- OCAP BiOp (2009)
- Draft Oroville BiOp (2009)
- Four draft 401's

# Enforceability:

## Why does the 401 need to be enforceable?

- It's the law (Clean Water Act). Staff got the principle exactly right.
- Objective demands on Oroville by SWP:
  - 4.2 Million afy contracted
  - 2.3 Million afy average annual delivery
- DWR and Contractors cannot be relied on to self-regulate

There are no other parties that provide enforcement that protects beneficial uses

- The BiOps (OCAP, draft for Oroville) have no carryover for Oroville or provisions for Delta flow
- The Ecological Committee under the Settlement has no authority to require carryover or Delta flow
- FERC has not required carryover or contributions to Delta flow

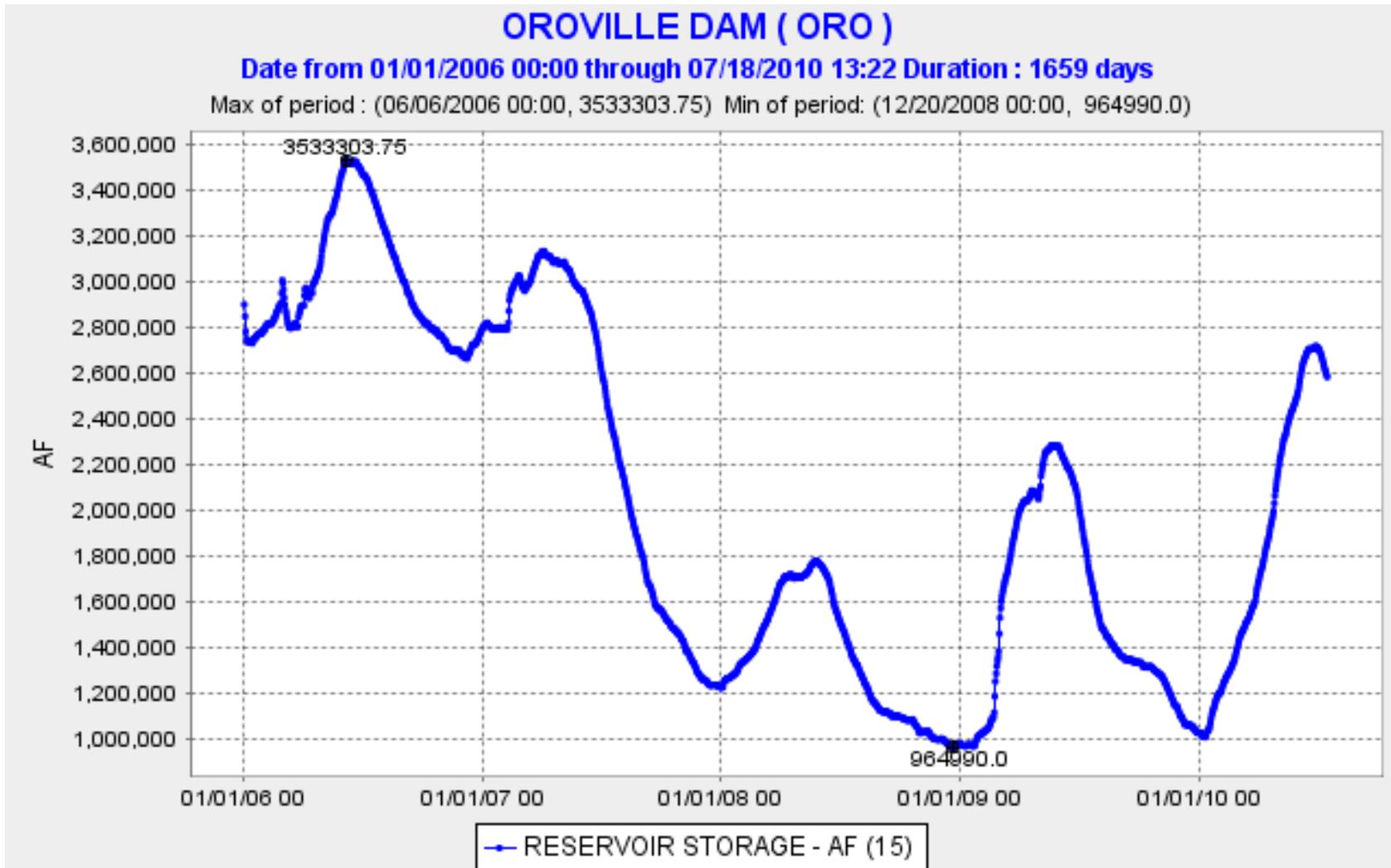
DWR and the Contractors take the license and the 401 as something with whose letter they must comply. They aggressively seek their best advantage within that framework. License implementation will be a permanent negotiation about the meaning of compliance. Clarity on compliance terms and an enforcing entity are thus triply important.

How does disconnection  
make Oroville 401  
temperature requirements  
unenforceable?

# Management Options to Reduce Lower Feather Temperatures

- Curtail pump-back operations (stand-alone)
- Remove shutters on Hyatt intake (stand-alone)
- Increase release to Low Flow Channel (dependent on cold water availability)
- Use river valve (no longer an option)
- Facilities modifications (in ten plus years)

To increase release to Low Flow Channel,  
how much cold water is available?



# How much cold water is available?

- Oroville is drawn down until about Jan 1
- Some cold water is not accessible for release (facilities mods could increase)
- After stand-alone measures, the only current option for to DWR to increase cold water availability is to “**target higher storage**” (Tracy Pettit, DWR, Oct. 5, 2010 Board meeting).

# Higher storage than what? How much higher?

- No clear guidelines
- No measures of compliance
- No consequences for failure to comply

“Set carryover storage requirements and re-evaluate if in practice they led to temporary weakening of the temperature standards.” – CSPA 9/24/10

# Will “facilities modifications” assure temperature compliance?

- No clarity on what “modifications” means
- Rabbit hole based on “feasibility”
- Feasibility under what storage conditions?
- Will access to cold water at bottom of Oroville Reservoir simply lead DWR to draw more water each year, and operate at an even lower range of stage elevations???

# Habitat Expansion Agreement

- No clear guidelines for achieving goals
- No measures of compliance
- No consequences for failure to comply
- No enforcement entity

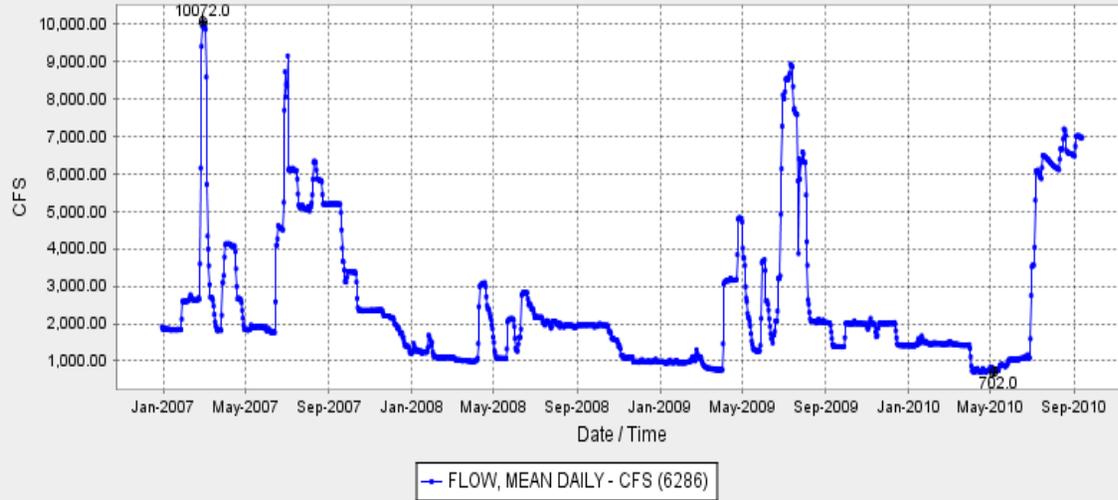
# Habitat Expansion Agreement

- Proposal for Lower Yuba River ignores interbreeding of wild Yuba River spring-run with Feather River hatchery spring-run
- Feather spring-run attracted to lower Yuba by high Yuba River spring flows combined with low Feather River spring flows.
- June 2010: 2420 salmon pass Daguerre Vaki fish counter; 1469 adipose-clipped

### FEATHER RIVER NEAR GRIDLEY ( GRL )

Date from 12/29/2006 22:51 through 09/14/2010 22:51 Duration : 1354 days

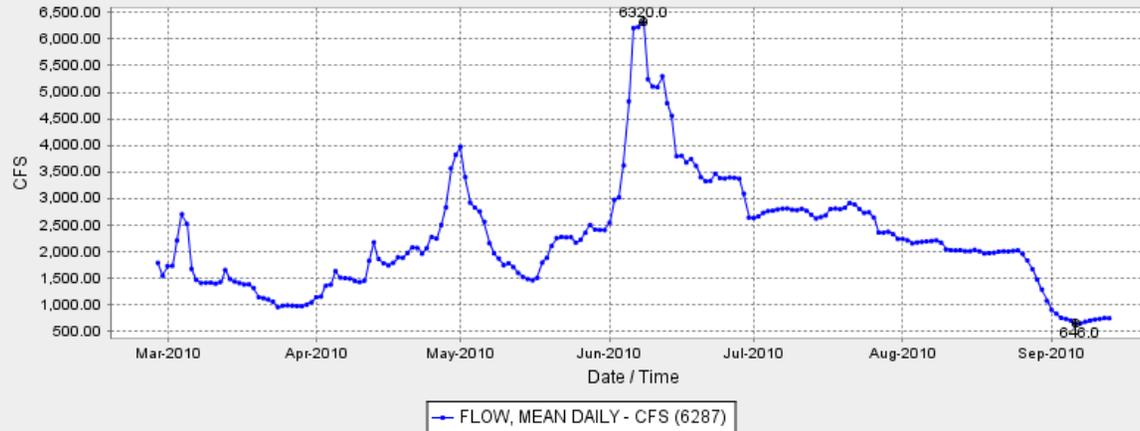
Max of period : (02/28/2007 00:00, 10072.0) Min of period : (05/06/2010 00:00, 702.0)



### YUBA RIVER NEAR MARYSVILLE ( MRY )

Date from 02/26/2010 23:05 through 09/14/2010 23:05 Duration : 199 days

Max of period : (06/08/2010 00:00, 6320.0) Min of period : (09/06/2010 00:00, 646.0)



# Habitat Expansion Agreement

- PG&E and DWR say “reserve authority”
- Contractors say: “All provisions of the Draft WQC that purport to reserve continuing unilateral authority, including General Conditions 1, 7, 8, 9, 10 and 11 are invalid ... in the event the Water Board attempts to exercise its reserved authority, DWR reserves the right to challenge such exercise on any basis” (p. 8, 9/27/10)

# Habitat Expansion Agreement

- FERC boundary is a red herring
- Underlying issue is a performance-based requirement. A mitigation has to mitigate.
- DWR says it's only an enhancement; ("Beneficial uses are met under current facility operations" – DWR 10/5/10); ignores impacts of hatchery fish on listed spring-run and steelhead.
- FERC also insists on performance-based measures

# Next Steps?

- Conduct technical assessment including future inflow, carryover, LFR spring flow, Delta flow
- Issue supplemental CEQA document that analyzes new measures, corrects old EIR
- Based on analysis, issue 5<sup>th</sup> draft 401 with clear enforceable requirements, measures of compliance, consequences for non-compliance, and defensible enforcement role for the State Board.

# If this 401 is approved now ...

- No Delta flow requirements from Feather
- No Oroville carryover storage requirement
- No enforceable temperature or spring flow requirements in Lower Feather River
- No clearly defined mitigation for lost salmon habitat
- HOW, WHEN AND UNDER WHAT AUTHORITY WILL THE BOARD EVER HAVE ANOTHER OPPORTUNITY???